In the High Court of Punjab and Haryana at Chandigarh

CWP No.17122 of 2007
Date of decision: November 6, 2007

Punjab State Industrial Development Corporation Limited

---Petitioner

Vs.

Appellate Authority, Industrial and Financial Reconstruction, New Delhi and others

---Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr.B.S.Walia, Advocate,
for the petitioner.

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M.M.KUMAR, J.

The instant petition is directed against the order dated 23.8.2007 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (for brevity 'the AAIFR') on an appeal filed by the respondent-company. In the appeal the respondent-company had challenged order dated 15.7.2002 passed by the Board for Industrial and Financial Reconstruction (for brevity 'the BIFR').

We have closely perused the order and find that the order has been passed on the basis of statement made by the petitioner-corporation on 16.5.2007. The aforementioned statement has been noticed in para 4 of the impugned order which was to the effect that the petitioner-corporation had directed the company to deposit the additional amount of Rs. 26 lacs as a condition for permitting refurbishing of plant and machinery and for the use of the same thereafter. The aforementioned amount of Rs. 26 lacs was

in addition to Rs. 10 lacs which was paid by the respondent company with the proposal for one time settlement on 30.6.2006. It is also appropriate to mention that earlier two civil writ petitions were filed before this Court being C.W.P.Nos. 8173 of 1998 and 14505 of 2001 by the respondent-company. Be that as it may, no stay order was granted. In the concluding para of the order of the AAIFR, a direction has been issued to the respondent-company to submit fully tied up revival proposal not later than 8 weeks from the date of the order by filing an original application before the BIFR. The AAIFR has further hoped that the BIFR would take necessary steps according to law on a priority basis as the matter is old and also the petitioner-corporation has been directed in the interest of revival of the company, allow the company to repair and use the plant and machinery under its possession. The aforementioned direction was in pursuance to the acceptance of amount of Rs. 36 lacs deposited by the respondent-company.

We have heard Mr. B.S.Walia, learned counsel for the petitioner, at considerable length. According to the learned counsel, the statement of the corporation made on 16.5.2007 to which reference has been made in para 4 , at best could be regarded as a mistake and, therefore, such mistakes cannot take away legal rights of the petitioner in order to defeat the larger public interest as it involves public money. According to the learned counsel the proposal was required to be put up before the Board of Directors and it is only after the approval by the Board of Directors that it could have attained the legal status. In that regard, he has made reference to Sections 391 and 392 of the Companies Act, 1956.

We have thoughtfully considered the aforementioned

submission and expressed our inability to accept the same as the order passed by AAIFR was a consent order. AAIFR has not issued any direction at its own but the direction flow from the statement made by the petitioner-corporation. If there was any mistake committed by making such statement, then the appropriate remedy was not to approach this Court but it obviously lies elsewhere. However, we find no merit in the instant petition and the same is accordingly dismissed. It is made clear that dismissal of this petition shall not debar the petitioner to file appropriate application before the AAIFR or the BIFR.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

NOVEMBER 6, 2007
paramjit